

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEBRASKA

IN THE MATTER OF:) CASE NO. BK09-42167-TLS
))
MICKY DON DAVIS,) CH. 7
))
))
 Debtor.)

ORDER

Hearing was held in Lincoln, Nebraska, on October 21, 2009, on Debtor's Motion to Convert Case to Chapter 13 (Fil. #15), and a Resistance filed by Ericson State Bank (Fil. #23). Hearing was held on October 7, 2009, on the Motion for Relief filed by the bank (Filing 10). John T. Tarrell appeared for Debtor, and Gregory Jensen appeared on behalf of Ericson State Bank .

Debtor filed this Chapter 7 case and now moves to convert to Chapter 13. Ericson State Bank objects. It claims pre-petition fraud, default on secured note payments, and an inability to fund a Chapter 13 plan. The motion to convert is denied. The schedules and statement of affairs show a monthly negative income and farm losses in 2007 and 2008. Debtor cannot fund a plan and any plan proposed will result in litigation with the bank over land ownership and the extent of the bank's lien. Conversion would be futile.

The bank filed a Motion for Relief from Stay (Fil. #10) and presented evidence. The Debtor has no equity, is in default, and cannot pay the debt. Debtor has presented no evidence that even if he is allowed to convert, that the property is necessary for an effective reorganization. The dispute between the Debtor and the bank should be litigated in state court.

IT IS ORDERED: The Motion to Convert (Fil. #15) is denied, and the Motion for Relief from Stay (Fil. #10) is granted.

DATED: October 21, 2009

BY THE COURT:

/s Timothy J. Mahoney
U.S. Bankruptcy Judge

Notice given by the Court to:

*John T. Tarrell
*Gregory Jensen
Philip M. Kelly
United States Trustee

Movant(*) is responsible for giving notice to other parties if required by rule or statute.